IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.668 of 2007

N. Ravi Shankar .. Petitioner

Vs

1. The Secretary to the Government
   Prohibition and Excise Department
   Fort St. George
   Chennai 600 009.

2. The District Magistrate
   and District Collector
   Vellore District
   Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiar
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who is a friend of the detenu Arumugam, son of Murugesan, who was incarcerated by order dated 24.4.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 24.4.2007 in Ref. No.C3.D.O.No.30/2007 against the petitioner's friend, Arumugam, son of Murugesan, now confined at Central Prison, Vellore, to set aside the same and to

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direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. On 23.3.2007 at 8.00 hours, the Sub Inspector of Police, Banavaram Police Station, along with police party, while conducting prohibition raid, found one Arumugam, the detenu herein, was selling arrack. On seeing the police people, the detenu tried to escape from that place, but he got caught by the police. A five litre white colour can containing 4½ litres of country arrack and three lorry tubes each containing 35 litres of odour country arrack were recovered from the detenu. The detenu was arrested and a case was registered in Crime No.72 of 2007 on the file of Banavaram Police Station under Sections 4(1)(i), 4(1)(aaa) and 4(1((A)ii of the Tamil Nadu Prohibition Act.

3. The second respondent, taking note of this case as a ground case and finding that there are five adverse cases pending against the detenu for the offences punishable under Sections 4(1)(aaa), 4(1)(i) and 4(1-A)ii of the Tamil Nadu Prohibition Act, and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 24.4.2007 on two grounds viz., (i) delay in considering the representation made on behalf of the detenu, dated 3.5.2007; and (ii) pre-determination of mind on the part of the sponsoring authority, as evident from their submission made in Crl.M.P.No.2289 of 2007 filed by the detenu seeking bail, on the file of Principal sessions Judge, Vellore, wherein, even prior to the passing of the detention order dated 24.4.2007, the counsel for the sponsoring authority submitted that the sponsoring authority had already taken steps to detain the detenu under Act 14 of 1982, and if he is released on bail, he is likely to abscond and based on the said submission, the said Crl.M.P. was dismissed.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

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5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.1. Coming to the case on hand, admittedly, objecting to the order of detention dated 24.4.2007, a representation was made on behalf of the detenu on 3.5.2007, which was received by the Government on 4.5.2007. Remarks were called for from the detaining authority on 7.5.2007, which was received by the detaining authority on 7.5.2007 itself. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 7.5.2007. The remarks of the sponsoring authority was received only on 14.5.2007, after a delay of seven days. The detaining authority sent the remarks to the Government on 14.5.2007 and the

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same was received on 16.5.2007. Thereafter, the file was submitted on 18.5.2007 and the same was considered by the Under Secretary and Additional Secretary on 18.5.2007 itself. The file was considered by the Minister on 21.5.2007. The rejection letter was prepared on 22.5.2007. However, the same was sent to the detenu on 25.5.2007.

6.2. The delay of five days (excluding Saturday and Sunday) on the part of the Sponsoring Authority in sending the remarks, which has not been properly explained, cannot be excused.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, admittedly, there is delay of five days in sending the parawar remarks by the Sponsoring Authority to the Detaining Authority, as referred to above, and there is a pre determined notion expressed by the sponsoring authority even before the order of detention is passed by the detaining authority, and the same, in our considered opinion, vitiate the impugned order of detention. We are, therefore, inclined to allow this petition.

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In the result, the order of detention dated 24.4.2007 is set aside. The detenu Arumugam is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To:

1. The Secretary to the Government
   Prohibition and Excise Department
   Fort St. George
   Chennai 600 009.

2. The District Magistrate
   and District Collector
   Vellore District
   Vellore.

3. The Superintendent,
   Central Prison,
   Vellore.

4. The Public Prosecutor
   High Court, Madras.

5.The Joint Secretary to Government
Public Law and Order Department
Fort St. George, Chennai-104

1 cc to Mr.O.S. Thilak Pasumpadiyar, Advocate, Sr. 53756

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